

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:03CR204-MU

UNITED STATES OF AMERICA)	
)	
vs.)	<u>ORDER</u>
)	
TIMOTHY FONSELL GIVENS,)	
)	
Defendant.)	
_____)	

THIS MATTER is before the court upon Defendant's Motion to Correct Sentence of November 2, 2005. Defendant was sentenced on December 21st, 2004, and did not appeal. Thus, Defendant's conviction became final ten days later. Federal Rule of Appellate Procedure 4(b)(1)(A)(i). United States v. Booker, which forms the basis for Defendant's motion, was decided on January 12, 2005. Though the time between the two was short, Booker only applied to cases on direct review and not those made final prior to its decision. United States v. Morris, 429 F.3d 65, 72 (4th Cir. 2005) (holding that Booker does not apply to cases on collateral review). As such, Defendant cannot benefit from the Booker, and his motion must be DENIED.

IT IS SO ORDERED.

Signed: January 23, 2006

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
Chief United States District Judge

